REMARKS

Claims 25-29, 31-33 and 35-41 are pending.

In the Office Action mailed August 22, 2006, the Examiner rejected the pending claims under 35 USC § 103 as unpatentable over Ho et al. (US 6 850 981) ("Ho") in view of Zavalkovsky et al. (US 6 959 332) ("Zavalkovsky").

Applicant has amended the pending claims to even more clearly define over the combination of Ho and Zavalkovsky. Applicant has amended all of the independent claims to clarify that the request to transmit relates to a particular data element and no other. Applicant has further amended all of the independent claims to clarify that the request to transmit includes an IEEE 802.1Q tag having a transmission priority that is used to schedule transmission of the data element. Applicant has also added the single word "element" after "data" in claim 39 to maintain consistency of usage.

Applicant traverses the § 103 rejections based on the foregoing amendments and the following considerations.

1. THE COMBINATION OF HO AND ZAVALKOVSKY DOES NOT TEACH OR SUGGEST A REQUEST TO TRANSMIT A DATA ELEMENT THAT INCLUDES AN IEEE 802.1Q TAG HAVING A PRIORITY THAT IS USED TO SCHEDULE TRANSMISSION OF THE DATA ELEMENT

All claims as amended recite *inter alia* wireless communication wherein a request to transmit a data element includes an IEEE 802.1Q tag having a priority that is used to schedule transmission of the data element.

In the latest Office Action, the Examiner acknowledges that Ho does not disclose a request to transmit having an IEEE 802.1Q tag. However, the Examiner notes that Zavalkovsky discloses a data element having an IEEE 802.1Q tag and asserts that the artisan of ordinary skill would have been motivated to combine Ho with Zavalkovsky "to allow a requested quality of service for a particular data element to be signaled such that the data element may be processed according to the required quality of service." (Office Action dated August 22, 2006, p.7).

The combination of Ho and Zavalkovsky does not teach what is recited in the amended claims. The amended claims recite *inter alia* a request to transmit having an IEEE 802.1Q tag with priority. Ho and Zavalkovsky each disclose a data element having an IEEE 802.1Q tag with priority. There is no indication in either reference, however, to include an IEEE 802.1Q tag with priority in a request to transmit. The obviousness rejection is therefore improper since even if there were a motivation to combine Ho and Zavalkovsky, the combination would not teach or suggest the claimed invention. *In re Nielson*, 816 F.2d 1567, 2 USPQ 2d 1525, 1528 (Fed. Cir. 1987) ("We agree with Nielson that the PTO did not present a *prima facie* case of obviousness ... in that the references offer no suggestion of the claimed combination.") A *prima facie* case of obviousness here would require, at a minimum, a secondary reference combinable with Ho that discloses an IEEE 802.1Q tag within a request to transmit. Zavalkovsky is not such a reference.

Indeed, in an earlier Office Action mailed April 13, 2006, the Examiner withdrew his § 102 rejection based on Ho for the reason that although Ho discloses an IEEE 802.1Q tag having a priority, "Ho et al. does not disclose that the priority for the data element is encoded in an IEEE 802.1Q tag within the request." (April 13, 2006 Office Action p.7) (emphasis added). Having previously acknowledged that Ho's disclosure of a data element having an IEEE 802.1Q tag priority does not correspond to a request to transmit having an IEEE 802.1Q tag priority as recited in the claims, the Examiner

cannot now sustain an obviousness rejection by combining Ho with a secondary reference, Zavalkovsky, that like Ho merely discloses a data element having an IEEE 802.1Q tag priority.

The amended claims are allowable for the reason that the combination of Ho and Zavalkovsky does not fairly teach or suggest wireless communication wherein a request to transmit a data element includes an IEEE 802.1Q tag having a priority that is used to schedule transmission of the data element.

2. THE ART OF RECORD FURTHER DOES NOT TEACH OR SUGGEST WIRELESS COMMUNICATION WHEREIN A PARTICULAR DATA ELEMENT AND NO OTHER IS SCHEDULED FOR TRANSMISSION PURSUANT TO A TRANSMISSION PRIORITY INCLUDED IN A REQUEST TO TRANSMIT THE PARTICULAR DATA ELEMENT

Claims 25-29, 31-33 and 35-41 as amended recite *inter alia* wireless communication wherein a particular data element and no other is scheduled for transmission pursuant to a transmission priority included in a request to transmit the particular data element.

In the latest Office Action, the Examiner clarified his continuing rejection based on an assertion that the claim recitation of "a request to transmit a particular data element" finds correspondence in Ho's reservation request for a session/application. In particular, the Examiner stated as follows:

> While it may be true that Ho et al. discloses a "per session" reservation style, there is currently no limitation in the claims limiting the reservation style to a "per data element" style. The claim language stating "a request to transmit a particular data element" does not limit the request from being a request for a data session that includes the transmission of a particular data element. Therefore, the claims currently do not

> contain any limitation regarding making request for each data element independently from each other as argued.
> (Office Action mailed August 22, 2006, p.9).

Applicant thanks the Examiner for this clarification and has amended the claims to recite that its request to transmit pertains to a particular data element and no other. The amended claims thus contain a limitation regarding making a request for each data element independently.

By Ho's own admission, its session/application reservation requests reflect a "macro bandwidth management" strategy (see Ho, col. 10, line 20) for reserving link capacity for transmitting large quantities of data elements that belong to the same flow. The difference between Applicant's request to transmit a particular data element and no other, on the one hand, and Ho's session/application reservation requests, on the other, is manifest in the following definition of "session" from a popular Internet technical dictionary:

> In computer science, in particular networking, a session is either a lasting connection using the session layer of a network protocol or a lasting connection between a user (or user agent) and a peer, typically a server, usually involving the exchange of many packets between the user's computer and the server. A session is typically implemented as a layer in a network protocol (e.g., telnet or FTP).
> Wikipedia, Computer Science Definition of "Session"
> http://www.answers.com/topic/session-computer-science?method=6
> (emphasis added).

This difference between Ho's and Applicant's requests has operational consequences. Ho's "per session" and Applicant's "per data element" reservation styles further

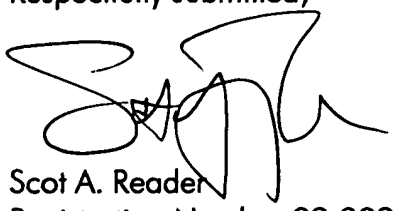
substantially different network policies. Ho's requests may be less frequent and therefore require less signaling overhead than Applicant's requests; however, at the same time, Ho's decoupling of bandwidth reservations from the bandwidth requirements of individual data elements may also lead to gross misallocations of bandwidth.

In summary, the amended claims are allowable for the further reason that the prior art of record fails to teach or suggest wireless communication wherein a particular data element is scheduled for transmission pursuant to a transmission priority included in a request to transmit the particular data element and no other.

In view of the foregoing, favorable action on all claims are respectfully requested. Accordingly, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Should any question remain in view of this communication, the Examiner is encouraged to call the undersigned so that a prompt disposition of this application can be achieved.

Respectfully submitted,



Scot A. Reader
Registration Number 39,002

Telephone No. (303) 440-4050
Scot A. Reader, P.C.
1320 Pearl Street
Suite 228
Boulder, CO 80302